



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

NOV 29 2004

Via Certified Mail, Return Receipt Requested

Mike Mitchell, Treasurer
Dole North Carolina Victory
Committee, Inc.
PO Box 1154
Alexandria, Virginia 22313

RE: MUR 5610

Dear Mr. Mitchell:

On November 9, 2004, the Federal Election Commission found that there is reason to believe the Dole North Carolina Victory Committee, Inc. ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 432(c)(5), 432(h)(1), 434(b)(4)(H)(v), 434(6)(B)(v), and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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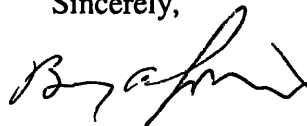
Mike Mitchell, Treasurer
Dole North Carolina Victory Committee, Inc.
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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Alexandra Dumas, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

cc: Cleta Mitchell, Esq., Foley & Lardner

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2 **FEDERAL ELECTION COMMISSION**

3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Dole North Carolina Victory Committee,
6 Inc. and Mike Mitchell, as treasurer

MUR: 5610

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9 **I. GENERATION OF THE MATTER**

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11 This matter was generated based on information ascertained by the Federal Election
12 Commission ("the Commission") in the normal course of carrying out its supervisory
13 responsibilities. See 2 U.S.C. § 437g(a)(2).

14 **II. BACKGROUND**

15
16 Earl Allen Haywood served as Assistant Treasurer of the Dole North Carolina Victory
17 Committee, Inc. ("Victory Committee" or "the Committee").¹ Between February 2002 and May
18 2003, Haywood wrote checks totaling approximately \$155,750 from the Committee accounts,
19 designating himself as payee. Neither Haywood nor the Committee kept track of the
20 disbursements nor reported any of them to the Commission, resulting in separate and distinct
21 violations of the Federal Election Campaign Act of 1971, as amended ("the Act");²
22 recordkeeping, reporting, and campaign depository violations. Furthermore, the Committee
23 improperly accepted contributions from corporations in violation of the Act.

¹ The Victory Committee raised funds for the Dole 2002 Committee Inc. and the North Carolina Republican Party.

² The facts relative to this matter occurred both prior to and after the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA") Pub.L. No. 10-55, 116 Stat. 81 (2002). BCRA did not substantively alter the provisions of the Act relevant to the facts in this matter. All statements of the law that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations hereunder.

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I. III. FACTUAL AND LEGAL ANALYSIS

As Assistant Treasurer of the Victory Committee, Haywood's duties included collecting and recording political contributions to the Committee, depositing the funds in the appropriate bank accounts, accounting for funds received by the Committee, tracking all disbursements from the Committee and reporting this information to the Commission. According to Haywood, his work with the Committee began when he was hired to carry out the accounting and reporting responsibilities for one fundraising event being co-hosted by the Committee. Eventually, his responsibilities expanded to other Committee events and he started receiving contributor checks at his home in Washington, D.C. Haywood claims that he alone was responsible for all of the functions of the accounting and reporting operation. However, he and Committee officials never finalized a contract concerning his employment and salary. As there was no mutual understanding regarding his compensation, Haywood resolved the matter by writing himself checks from Committee accounts.

In 2002, the Victory Committee filed a Statement of Organization with the Commission designating Haywood as Custodian of Records and Assistant Treasurer. In addition, the Commission's Electronic Filing Office issued passwords for use with the electronic filing of reports to the Committee's treasurer and to Haywood, as Assistant Treasurer, in response to written requests by the Committee's treasurer.

Between October 2002 and May 2003, the Reports Analysis Division ("RAD") sent a number of Requests For Additional Information ("RFAP") to the Victory Committee, which were either only partially answered or completely ignored by the Committee. However, one or more of those requests apparently prompted the Committee to conduct an extensive internal review of

1 its records. After completing its internal investigation, the Committee filed an amended
2 Statement of Organization removing Haywood from his position with the Committee. On or
3 about July 15, 2003, the Committee filed amended reports with the Commission that included the
4 disbursements to Haywood that had not been previously disclosed; most of those disbursements
5 were designated as "Unauthorized Disbursements" in the reports. Further, as a result of the
6 findings made during its review, the Committee had previously reported the matter to the
7 Department of Justice ("DOJ"). The Committee had not, however, voluntarily disclosed the
8 activity to the Commission at the time the Committee referred the matter to DOJ.³

9 Because a political committee is an artificial entity, it can only act through individuals or
10 agents. Pursuant to the Act, the Victory Committee, through its treasurer, was required to
11 account for disbursements and report them to the Commission. 2 U.S.C. §§ 432(c)(5),
12 434(b)(4)(H)(v), (6)(B)(v). Furthermore, the Committee was required to deposit all receipts
13 received in designated campaign accounts. 2 U.S.C. § 432(h)(1); 11 C.F.R. §§ 103.2, 103.3(a).
14 Commission regulations allow an assistant treasurer to act in place of a treasurer in the event of a
15 vacancy or if the treasurer is unavailable. 11 C.F.R. § 102.7. Ultimately, however, a committee
16 treasurer is the person responsible for accounting for disbursements and reporting them to the
17 Commission. 2 U.S.C. §§ 432(c)(5), 434(b)(4)(H)(v), (6)(B)(v). Haywood had actual authority
18 to issue disbursements, file reports and handle contribution checks on behalf of the Committee.
19 He was able to sign checks on Committee accounts and possessed a password, which the
20 Committee treasurer requested on his behalf, for the electronic filing of reports with the

³ In a letter dated July 15, 2003, the Committee advised RAD of Haywood's scheme and indicated that it had "notified the appropriate law enforcement authorities regarding the situation."

1 Commission. Thus, in performing his duties, Haywood acted as an agent of the Committee.
2 Cf. 11 C.F.R. § 109.3 (defining agent, albeit with regard to coordinated and independent
3 expenditures, as “any person who has actual authority, either express or implied, to engage in any
4 [number of specified activities] on behalf of the specific persons.”).

5 A principal is liable for the acts of its agents committed within the scope of his or her
6 employment. *Weeks v. United States*, 245 U.S. 618, 623 (1918); *Rouse Woodstock Inc. v. Surety*
7 *Federal Savings & Loan Ass’n*, 630 F. Supp. 1004, 1010-11 (N.D. Ill. 1986). Where a principal
8 grants an agent express or implied authority, the principal generally is responsible for the agents’
9 actions that fall within the scope of his authority.⁴ See *Weeks v. United States*, 245 U.S. 618, 623
10 (1918); Restatement (Second) of Agency § 228(1); see also *Rouse Woodstock Inc.*, 630 F. Supp.
11 at 1010-11 (principal who places agent in position of authority normally must accept the
12 consequences when the agent abuses that authority).

13 A principal can be held civilly liable even for the tortuous acts of an agent that are done
14 within the course and scope of the agent’s employment. *Veranda Beach Club Ltd. Partnership v.*
15 *Western Sur Co.*, 936 F.2d 1364, 1376 (1st Cir. 1991). When an agent acts within the scope of
16 his authority, a principal cannot escape responsibility on the grounds that he lacked knowledge of
17 the agent’s actions, or that the agent’s actions were unauthorized, tortuous, or even unlawful.
18 See *Local 1814, Int’l Longshoremen’s Ass’n v. NLRB*, 735 F.2d 1384, 1395 (D.C. Cir. 1984),
19 cert. denied, 469 U.S. 1072 (holding union liable for scheme in which officer of union conspired
20 with employer to procure illegal kickbacks).

⁴ An agent’s conduct is within the scope of his authority if it is the kind he is employed to perform, takes place within authorized time and space limits and is actuated, at least in part, by a purpose to serve the principal Restatement (Second) of Agency § 228 (1).

Even if an agent does not enjoy express or implied authority, a principal may be liable for the agent's actions on the basis of apparent authority. *Richards v. General Motors Corporation*, 991 F.2d 1227 (9th Cir. 1993). The Supreme Court has held principals liable for the actions of agents with apparent authority even where the agent acted in secret with the sole purpose of benefiting himself. *See, e.g., American Society of Mechanical Engineers, Inc. v. Hydrolevel Corp.*, 456 U.S. 556 (1982); *Gleason v. Seaboard Air Line Railway*, 278 U.S. 349, 353-55 (1929). In *American Society of Mechanical Engineers*, the Supreme Court reasoned that at times an agent's position facilitates a fraud against third persons when the agent's actions may appear to be performed in the ordinary course of business. *See* 456 U.S. at 559; Restatement (Second) of Agency § 261. A principal may be held liable even if the agent's acts are unauthorized, or even illegal, when the principal placed the agent in the position to commit the acts. *See First Amer. State Bank v. Continental Ins. Co.*, 897 F.2d 319 (8th Cir. 1990); *Hester v. New Amsterdam Casualty Co.*, 412 F.2d 505, 508 (4th Cir. 1969).

In the past, the Commission applied these general agency principles to political committees and held them liable for the acts of their agents. In MUR 3585, the Commission imputed liability to the Tsongas for President Committee for reporting violations, among others, as a result of the actions of its agent who had broad authority over the committee's financial transactions. In that case, the committee's chief fundraiser, who was responsible for receiving and accounting for campaign contributions, and assuring compliance with the Act, had opened a secret checking account under the committee's name but using his own social security number. He ultimately deposited \$181,000 in campaign contributions to that account, failed to include the deposits on campaign reports and spent the money for his own personal expenses. Similarly, in

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1 MUR 4389, the Commission made reason to believe findings against the Orange County
2 Democratic Central Committee for the acts of its chairman. The chairman opened a separate
3 bank account in the committee's name without informing other members of the committee, and
4 then deposited and spent committee funds through the use of that account. In addition, in MUR
5 2602, the Commission made knowing and willful findings against the Rhodes Committee for
6 violations committed through the acts of its Assistant Treasurer/Finance Chairman. In that
7 matter, the finance chairman accepted corporate contributions and converted them into smaller
8 amounts as contributions in the names of other persons. He also made out false contributor cards
9 and tried to prevent the campaign manager from sending out acknowledgement letters to those
10 fake contributors. Finally, in AO 1992-29, the Commission deemed the committee to have
11 received contribution checks on the date an employee, who was not the treasurer but was
12 authorized to receive contributions, received them even though the employee had left the checks
13 in a drawer until after the 10-day deposit period had expired, had acted without the treasurer's
14 knowledge, and had acted contrary to express instructions.

15 Based on the fact that he had signatory power on the Committee accounts, Haywood had
16 actual authority to make disbursements on behalf of the Committee. Likewise, his possession of
17 an electronic filing password meant to serve as an electronic signature, specifically provided to
18 him by the Committee's treasurer, also indicates he had actual authority to file reports with the
19 Commission. Thus, Haywood was acting within the scope of his authority when he wrote checks
20 for the disbursement of funds and when he completed and filed reports with the Commission on
21 behalf of the Victory Committee. Although Haywood may not have been authorized to make the

1 disbursements to himself, it appears he was permitted to make disbursements without prior
2 authorization of other Committee personnel.

3 The Victory Committee failed to keep an accurate record of its disbursements and to file
4 accurate reports with the Commission. Further, the Committee did not deposit all of the
5 contributions it received into designated campaign accounts. Therefore, based on the foregoing,
6 there is reason to believe that Dole North Carolina Victory Committee, Inc. and Mike Mitchell,
7 as treasurer, violated 2 U.S.C. §§ 432(c)(5), 432(h)(1), 434(b)(4)(H)(v), and 434(6)(B)(v).

8 Furthermore, in the course of review of available information, it appears the Victory
9 Committee may have improperly accepted contributions from corporations. On July 15, 2003,
10 the Victory Committee filed with the Commission an amended April 2003 quarterly report and
11 an amended July 2003 quarterly report, ostensibly to reflect Haywood's actions. Those amended
12 reports contained lists of contributions, totaling approximately \$94,620, from 31 different entities
13 appearing to be corporations. After receiving those amended reports, RAD sent to the Victory
14 Committee two new RFAs concerning the apparent corporate contributions. On February 18,
15 2004, the Victory Committee submitted a response to the RFAs, but failed to provide any
16 information to explain whether the entities listed on the amended filings were, in fact,
17 corporations. In addition, the contributions are noted on the amended reports as being
18 "unauthorized deposits," but the Victory Committee did not explain why these contributions
19 were so listed.

20 Therefore, based on the foregoing, there is reason to believe that the Dole North Carolina
21 Victory Committee, Inc. and Mike Mitchell, as treasurer, violated 2 U.S.C. § 441b(a).